IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 29856 of 1998

Between:

The Depot Manager, APSRTC,

Tandur.

..... PETITIONER

AND

1. M.A.Samee,

E.No.250351, Ex.Cleaner,

R/o.8-8-110, Near Niam Shaheed Darga,

Old Tandur.

2. The Presiding Officer,

Labour Court-III, Hyderabad.

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the award in I.D.No.79/95 dated 6.8.1997 on the file of the Labour Court-III, Hyderabad and quash the same as arbitrary and illegal by way of issue of writ of certiorari or any other appropriate writ order.

Counsel for the Petitioner:MR. Y.VIVEKANANDA SWAMY

Counsel for the Respondent No.1: MR.V.NARASIMHA GOUD

The Court made the following :

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.29856 OF 1998

ORDER:

This writ petition is filed by the Management aggrieved by the award dated 06.08.1997 in I.D.No.79 of 1995 passed by the Presiding Officer, Labour Court-III, Hyderabad wherein order of removal of the workman from service was set aside and the Management was directed to reinstate the workman with continuity of service with all attendant benefits including the seniority and promotion, if any, but without any back wages.

The case of the petitioner as can be culled out from the affidavit filed in support of this writ petition is that respondent No.1 was appointed as Cleaner in the petitioner Corporation in 1981 and was attached to Tandur Depot. It is alleged that the respondent No.1 unauthorisedly absented from his duties for 49 days i.e., from 22.7.1991 to 7.9.1991 without any sanction of leave from the authorities. Therefore, he was charge sheeted for the alleged misconduct and a domestic enquiry was conducted as per the procedure contemplated under the regulations of the Corporation and thereby he was removed from service. The respondent No.1 raised

an Industrial Dispute before the Labour Court-III, Hyderbad and the Labour Court vide impugned award set aside the removal order and directed the reinstatement of service of respondent No.1 with continuity of service with all attendant benefits including seniority and promotion if any, but without back wages. Aggrieved by the same, the Management filed this writ petition.

It is contended by the learned counsel for the petitioner that the award passed by the Labour Court is bad in law and contrary to the facts on record. He further contended that the Labour Court failed to notice that the workman had unjustly absented from his duty for 49 days from 22.7.1991 to 7.9.1991 without any prior permission or leave from the Management, therefore, the Labour Court was not right in holding that the workman was really sick and such an award ought not to have been passed by the Labour Court.

I have gone through the award passed by the Labour Court. The Labour Court noticed that the workman absented unauthorisedly for 49 days from 22.7.1991 to 7.9.1991 by producing a medical certificate issued by a private medical officer. It was also observed that in order to provide a chance to improve the attendance, the workman was taken on duty from 5.10.1991 pending disciplinary action, but he could not discharge his duties regularly. The very fact that the Management itself tried to give chance to the workman goes to show that the Management had not taken his absence as an act of defiance or a calculated act to absent by the workman. Admittedly, it is the first misconduct committed by the workman. Under those circumstances, the lenient view taken by the Labour Court in directing reinstatement by denying back wages for the period of removal from service does not suffer from any infirmity. Therefore, I am of the considered opinion that denial of back wages itself was a sufficient punishment to the respondent No.1 for the alleged misconduct.

Therefore, I see no reason to interfere with the award of the Labour Court. The writ petition fails and is accordingly dismissed.

26.7.2004.

mdaa.

Copy to:

1. The Depot Manager, APSRTC,

Tandur.

2. The Presiding Officer,

Labour Court-III, Hyderabad.

3. Two C.D.Copies.